IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

FRIDAY, THE 16TH NOVEMBER 2007 / 25TH KARTHIKA 1929

WP(C).No. 33820 of 2007(A)

PETITIONER:

K.BABURAJAN PILLAI, S/O.K.KURRAN PILLAI,
FORESTER, PATHANAPURAM FOREST RANGE OFFICE,
(UNDER PUNALUR DIVISION), PATHANAPURAM P.O.,
KOLLAM DISTRICT.

BY ADV. SRI.M.V.THAMBAN

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY THE SECRETARY TO THE GOVT., DEPARTMENT OF FOREST AND WILD LIFE, GOVT.SECRETARIAT, THIRUVANANTHAPURAM.

2. THE PRINCIPAL CONSERVATOR OF FOREST, THIRUVANANTHAPURAM.

3. THE CONSERVATOR OF FOREST, SOUTHERN CIRCLE, KOLLAM.

BY GOVERNMENT PLEADER SRI. BEJOY CHANDRAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V.GIRI, J

W.P.(C). 33820/2007

Dated this the 16th day of November, 2007

JUDGMENT

The petitioner is at present working as Forester in the Forest Range Office, Pathanapuram. He originally joined service as L.D.Typist on 28.2.1985 and was then promoted as U.D. Typist. Later he was posted as U.D.Clerk. Petitioner contends that as per Special Rules which existed prior to 27.2.1990, 10% of the vacancies in the post of Forester was to be reserved to be filled up by Ministerial Staff in the department, by transfer. According to him, he was qualified to be so appointed by transfer and he had submitted an application on 12.2.1990 through the third respondent. He contends that a large number of vacancies in the Kollam circle were available in the year 1990, and therefore his application submitted on 12.2.1990 should have been considered against those vacancies. It may be seen that Special Rules were amended on 27.2.1990 and the provision by which 10% of the vacancies would be filled up by transfer from among

the Ministerial staff was omitted. Ultimately the said position was restored with effect from 31.1.1998. It seems that thereafter applications were invited by the third respondent from among the Ministerial Staff for appointment by transfer and the petitioner applied in the year 1998. When the list of eligible persons from among Ministerial wing was prepared, the petitioner was omitted. When this was challenged by him in O.P.18153/1999 seeking a direction to the respondent to extend the same benefit to him, during the pendencey of the writ petition, petitioner was appointed by transfer as Forester. This Court disposed of the aforementioned writ petition by Ext.P1 judgment directing the respondent to fix the petitioner's seniority by placing him in the order of seniority among U.D. Clerk vis-a-vis those persons who were appointed in the selection made in 1998. Petitioner challenged the said judgment in W.A.415/2006 and by Ext.P2 judgment, the said appeal was disposed of permitting the petitioner to file a representation highlighting his claim. It was also made

clear that Ext.P1 will not stand in the way of the Government considering such a claim. It is also made clear that Ext.P1 judgment will however continue to bind the parties. Petitioner's claim was thereafter considered by Ext.P4 order and the same was rejected essentially on the premise that the petitioner had not completed the stipulated five years of service on the date on which he had applied for appointment as Forester by transfer namely 12.2.1990. Ext.P4 has been challenged by the petitioner in this writ petition.

2. Learned counsel for the petitioner submits that there was no stipulation of minimum period of five years of service for being considered as eligible for appointment by transfer. That was not part of the statutory rules as it existed in 1990. Therefore, the reason now given in Ext.P4, to reject the petitioner's claim that he should have been appointed as Forester in the year 1990 against 10% quota available for the staff of the ministerial wing, is untenable. Petitioner

therefore prays that his seniority in the post of Forester must be considered with reference to the application submitted on 12.2.1990 and that therefore notionally he must be accommodated against the vacancy in the post of Forester which must have been available in the year 1990, prior to the amendment of the Special Rules with effect from 27.2.1990.

3. In my view petitioner's claim cannot be entertained, at this stage for more than one reason. Firstly even in 1990, petitioner only had a claim to be considered for appointment as a Forester against 10% vacancies made available to the staff of the ministerial wing. In other words, along with other eligible persons petitioner could have also been considered for appointment by transfer. The special rules was amended on 27.2.1990. Assuming that the petitioner was eligible to be considered for appointment, it goes without saying that there would have been several other persons, in the Forest Department in 1990 who would have also been

eligible as such to be considered as Forester. Had the petitioner a claim that the amendment with effect from 27.2.1990, should not affect his claim for being considered for appointment by transfer as a Forester because he had applied prior to 27.2.1990, then the petitioner should have moved the authorities or this Court within a reasonable time after the amendment of the rules, for consideration of his application with reference to the pre-amended rules. That was not done. In fact the petitioner had moved the authorities subsequently, after the restoration of 10% ratio for ministerial staff in the year 1998, and taking note of the petitioner's application he was appointed as a Forester in the year 1998. It is not open to the petitioner to contend that though he was appointed as Forester in the year 1998, notionally his date of appointment as Forester should date back to 1990 only for the reason that he had submitted an application in 1990 prior to the amendment of the special rules.

4. Further, it is a fact that this Court in Ext.P1 judgment specifically directed the respondents to fix the seniority of the petitioner by placing him in the order of seniority among U.D.Clerk vis-a-vis those persons who were eligible for appointment in the year 1998. In Ext.P2 judgment petitioner was permitted to make a representation by the Division Bench.

5. In other words, Division Bench had not interfered with the directions in Paragraph 6 of Ext.P1 judgment by which the respondents were directed to fix the seniority of the petitioner by placing him in the order of his seniority among U.D.Clerks vis-a-vis those persons who were appointed as Forester in the selection made in 1998. In my view, the claim of the petitioner for seniority in the post of Forester with reference to the date of his application,12.2.1990, is, therefore, misconceived. The learned counsel for the petitioner submits that these are not the reasons given in Ext.P4 and the Government does not seem to have applied its

mind properly while dealing with his claim. It is true that the reason given in Ext.P4 may or may not be correct as such. The question is whether this Court can direct that the petitioner be assigned seniority in the post of Forester with effect from 1990 notwithstanding the fact that he was actually appointed as Forester only in the year 1998. In my view, for the reasons mentioned above, it cannot be done. I do not find any reason to interfere with Ext.P4 or issue a direction to the respondents to assign the petitioner, seniority in the post of Forester with effect from 1990. Writ petition, therefore, fails and it is accordingly dismissed.

V.GIRI
Judge

mrcs